

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (New Administrative Regulation)

5 907 KAR 18:005. Reimbursement provisions and requirements regarding Veterans Af-
6 fairs nursing facility services.

7 RELATES TO: 42 C.F.R. Part 413, 42 U.S.C. 1396a(a)(30)(A), 42 U.S.C.
8 1396a(a)(13)(A), 42 C.F.R. 447.204

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
11 Services, Department for Medicaid Services has responsibility to administer the Medi-
12 caid Program. KRS 205.520(3) authorizes the cabinet by administrative regulation, to
13 comply with any requirement that may be imposed, or opportunity presented, by federal
14 law to qualify for federal Medicaid funds. This administrative regulation establishes the
15 Department for Medicaid Services' reimbursement provisions and requirements regard-
16 ing Veterans Affairs nursing facility services in Kentucky.

17 Section 1. Provider Participation. To be eligible to be reimbursed for services under
18 this administrative regulation a VA NF shall be currently:

19 (1) Enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

20 (2) Participating in the Kentucky Medicaid Program in accordance with 907 1:671;

1 (3) Licensed by the Cabinet for Health and Family Services, Office of Inspector Gen-
2 eral as a nursing facility; and

3 (4) Certified as a state veterans home by the United States Department of Veterans Af-
4 fairs.

5 Section 2. General Requirements. To be reimbursable by the department, a service
6 shall be:

7 (1) Medically necessary;

8 (2) Provided to a recipient who is eligible for nursing facility services in accordance
9 with 907 KAR 1:022;

10 (3) Provided in accordance with 907 KAR 1:022; and

11 (4) Provided by a VA NF that meets the requirements established in Section 1 of this
12 administrative regulation.

13 Section 3. Covered Services. The following services, if provided by a VA NF in ac-
14 cordance with this administrative regulation, shall be covered under this administrative
15 regulation:

16 (1) Nursing facility services;

17 (2) Ancillary services;

18 (3) Laboratory procedures or radiological services if ordered by a:

19 1. Physician;

20 2. An advanced practice registered nurse if the laboratory test or radiological service
21 is within the scope of the advance practice registered nurse's practice; or

22 3. Physician assistant if:

23 a. Authorized by the supervising physician; and

b. The laboratory test or radiological service is within the scope of the physician assistant's practice; or

(4) Psychological or psychiatric therapy.

Section 4. Reimbursement. (1) The department shall reimburse a VA NF for services under this administrative regulation on a cost basis.

(2)(a) The cost basis shall include reimbursing:

1. A VA NF for services on an interim basis during a state fiscal year using a prospective payment rate; and

2. A final reimbursement to a VA NF for services for a state fiscal year:

a. Equal to the VA NF's Medicaid allowable cost for the state fiscal year; and

b. That results from a reconciliation of the:

(i) Interim prospective reimbursement paid by the department to the VA NF for the state fiscal year; and

(ii) Actual Medicaid allowable costs experienced by the VA NF for the state fiscal year as reflected on the cost report that has been desk reviewed and approved by the department for the state fiscal year.

(b)1. The prospective payment rate referenced in paragraph (a)1 of this subsection shall be:

a. Established using the most recently submitted cost report available to and reviewed by the department as of May 16 prior to the beginning of the state fiscal year; and

b. Trended and indexed to the midpoint of the state fiscal year.

2. For example, to set a prospective payment for a VA NF effective July 1, 2014, for

1 the state fiscal year beginning July 1, 2014, the department shall:

2 a. Use the most recently submitted cost report available to the department as of May
3 16, 2013; and

4 b. Trend and index the prospective payment rate to December 31, 2013.

5 (3)(a) A prospective payment rate for services:

6 1. Shall be specific to the VA NF;

7 2. Shall not be subject to retroactive adjustment except as specified in this section of
8 this administrative regulation;

9 3. Shall be determined by the department on a cost basis annually; and

10 4. Except as established in paragraph (b) of this subsection, shall be based on a VA
11 NF's Medicaid allowable costs.

12 (b)1. If no cost report containing a full state fiscal year of cost data for a VA NF is
13 available as of May 16, to set a prospective payment rate for the VA NF the department
14 shall:

15 a. If at least six (6) months of cost data is available, use pro forma cost data:

16 (i) Submitted to the department by the VA NF; and

17 (ii) Approved by the department; or

18 b. If less than six (6) months of cost data is available, establish a prospective pay-
19 ment rate equal to the statewide average prospective payment rate of existing VA NFs
20 until the department receives a pro forma cost data including at least six (6) months of
21 cost data.

22 2. Pro forma cost data shall be trended and indexed in the same way as established
23 in subsection (2)(b) of this section.

1 (c) The department may adjust a prospective payment rate during the state fiscal
2 year if the prospective payment rate that was established appears likely to result in a
3 substantial cost settlement that could be avoided by adjusting the prospective payment
4 rate.

5 (d)1. If the latest available cost report data has not been audited or desk-reviewed
6 prior to rate setting for the universal year beginning July 1, a prospective rate based on
7 a cost report which has not been audited or desk-reviewed shall be subject to adjust-
8 ment when the audit or desk review is completed.

9 2. An unaudited cost report shall be subject to an adjustment to the audited amount
10 after auditing has occurred.

11 (e)1. If the department has made a separate rate adjustment as compensation to a
12 VA NF for a minimum wage update, the department shall:

- 13 a. Not pay the VA NF twice for the same costs; and
14 b. Adjust downward the trending and indexing factors to the extent necessary to re-
15 move from the factors costs relating to the minimum wage updates already provided for
16 by the separate rate adjustment.

17 2. If the trending and indexing factors include costs related to a minimum wage in-
18 crease:

- 19 a. The department shall not make a separate rate adjustment; and
20 b. The minimum wage costs shall not be deleted from the trending and indexing fac-
21 tors.

22 (4) The department shall consider an adjustment to a VA NF's prospective rate (sub-
23 ject to the upper payment limit) if:

1 (a) The VA NF's increased costs are attributable to:

2 1. A governmentally imposed minimum wage increase, staffing ratio increase, or a
3 level of service increase; and

4 2. The increase was not included in the Global Insight Index;

5 (b) A new licensure requirement or new interpretation of an existing requirement by
6 the appropriate governmental agency as issued in an administrative regulation results in
7 changes that affect all VA NFs; or

8 (c) The VA NF experiences a governmentally-imposed displacement of residents.

9 (5)(a) The amount of any prospective payment rate adjustment resulting from a gov-
10 ernmentally-imposed minimum wage increase or licensure requirement change or inter-
11 pretation as cited in subsection (5) of this section shall not exceed the amount by which
12 the cost increase resulting directly from the governmental action exceeds on an annual-
13 ized basis the inflation allowance amount included in the prospective rate for the gen-
14 eral cost area in which the increase occurs.

15 1. For purposes of this determination, costs shall be classified as either:

16 a. Salaries; or

17 b. Other.

18 2. The effective date of an interim rate adjustment shall be the first day of the month
19 in which the adjustment is requested or in which the cost increase occurred, whichever
20 is later.

21 (6) A year-end adjustment of a prospective rate and a retroactive cost settlement ad-
22 justment shall be made if:

23 (a) An incorrect payment has been made due to a computational error (other than an

omission of cost data) discovered in the cost basis or establishment of the prospective rate;

(b) An incorrect payment has been made due to a misrepresentation on the part of a facility (whether intentional or unintentional);

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser; or

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(7)(a) The department shall retroactively cost settle reimbursement for services.

(b) Retroactive settlement shall entail:

1. Comparing interim prospective payments with the properly apportioned cost of Medicaid services rendered;

2. A tentative cost report settlement based upon:

a. Eighty (80) percent of any amount due the facility after a preliminary review is performed; or

b. 100 percent settlement of any liability due the department; and

3. A final cost report settlement after the allowed billing period has elapsed for the dates of service identified within the cost report.

(c) To be considered final, a cost report shall have been reviewed and approved by the department.

Section 5. Allowable and Non-allowable Costs. (1) Nursing facility services costs

1 shall be the direct costs associated with nursing facility services.

2 (2)(a) Except as provided in paragraph (d) of this subsection, interest expense used
3 in setting a prospective rate shall be an allowable cost if:

4 1. Permitted pursuant to 42 C.F.R. 413.153; and

5 2. The interest expense:

6 a. Represents interest on:

7 (i) Long term debt existing at the time the provider enters the program; or

8 (ii) New long-term debt, if the proceeds are used to purchase fixed assets relating to
9 the provision of the appropriate level of care; or

10 b. Is for working capital and operating needs that directly relate to providing patient
11 care.

12 (b) The forms of indebtedness may include:

13 1. Notes, advances, and various types of receivable financing; or

14 2. Mortgages, bonds, and debentures if the principal is to be repaid over a period in
15 excess of one (1) year.

16 (c) If a debt is subject to variable interest rates found in balloon-type financing, rene-
17 gotiated interest rates shall be allowable.

18 (d) Interest on a principal amount used to purchase goodwill or other intangible as-
19 sets shall not be considered an allowable cost.

20 (3)(a) The allowable cost for a service or good purchased by a VA NF from a related
21 organization shall be the cost to the related organization unless it can be demonstrated
22 that the related organization is equivalent to a second party supplier.

23 (b) Except as provided in paragraph (c) of this subsection, an organization shall be

1 considered a related organization if an individual possesses five (5) percent or more of
2 ownership or equity in the facility and the supplying business.

3 (c) An organization shall not be considered a related organization if fifty-one (51) per-
4 cent or more of the supplier's business activity of the type carried on with the VA NF is
5 transacted with persons and organizations other than the VA NF and its related organi-
6 zations.

7 (4) The amount allowable for leasing costs shall not exceed the amount which would
8 be allowable based on the computation of historical costs.

9 (5) A cost shall be allowable and eligible for reimbursement if the cost is:

10 (a) Reflective of the provider's actual expenses of providing a service; and

11 (b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9.

12 (6) The following costs shall be allowable:

13 (a) Costs to related organizations pursuant to 42 C.F.R. 413.17;

14 (b) Costs of educational activities pursuant to 42 C.F.R. 413.85;

15 (c) Research costs pursuant to 42 C.F.R. 413.90;

16 (d) Value of services of nonpaid workers pursuant to 42 C.F.R. 413.94;

17 (e) Purchase discounts and allowances pursuant to 42 C.F.R. 413.98;

18 (f) Refunds of expenses pursuant to 42 C.F.R. 413.98;

19 (g) Depreciation on buildings and equipment if a cost is:

20 1. Identifiable and recorded in the provider's accounting records;

21 2. Based on historical cost of the asset or, if donated, the fair market value; or

22 3. Prorated over the estimated useful life of the asset using the straight-line method;

23 (h) Interest on current and capital indebtedness;

(i) Professional costs of services of full-time or regular part-time employees not to exceed what a prudent buyer would pay for comparable services; or

(j) A provider tax on a VA NF.

(7) The following costs shall not be allowable:

(a) The value of services provided by nonpaid members of an organization if there is an agreement with the provider to furnish the services at no cost;

(b) Political contributions;

(c) Legal fees for unsuccessful lawsuits against the Cabinet for Health and Family Services;

(d) Travel and associated costs outside of the Commonwealth of Kentucky to conventions, meetings, assemblies, conferences, or any related activities that are not related to NF training or educational purposes; or

(e) Costs related to lobbying.

(8) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) 1. Determine the actual gain on the sale of the facility; and

2. Add to the seller's depreciated basis two-thirds ($\frac{2}{3}$) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis;

(b) Gain shall be the amount in excess of a seller's depreciated basis as computed under program policies at the time of a sale, excluding the value of goodwill included in the purchase price;

1 (c)1. A sale shall be any bona fide transfer of legal ownership from an owner to a new
2 owner for reasonable compensation, which shall usually be fair market value; and

3 2. A lease purchase agreement or other similar arrangement which does not result in
4 a transfer of legal ownership from the original owner to the new owner shall not be con-
5 sidered a sale until legal ownership of the property is transferred; and

6 (d) If an enforceable agreement for a change of ownership was entered into prior to
7 July 18, 1984, the purchaser's cost basis shall be determined pursuant to paragraphs
8 (a) through (c) of this subsection.

9 (9)(a) An increase in valuation in relation to depreciation and interest costs shall not
10 be allowed for changes of ownership occurring after July 18, 1984, and before October
11 1, 1985.

12 (b) For bona fide changes of ownership entered into on or after October 1, 1985, the
13 depreciation and interest costs shall be increased in valuation in accordance with 42
14 U.S.C. 1395x(v)(1)(O)(i).

15 (10)(a) Maximum allowable costs shall be the maximum amount which may be al-
16 lowed to a VA NF as reasonable cost for the provision of a supply or service while com-
17 plying with limitations expressed in related federal or state regulations.

18 (b) Costs shall be subject to allowable cost limits pursuant to 42 C.F.R. 413.106.

19 Section 6. Cost Report Requirements. (1)(a) A VA NF shall, no later than five (5)
20 months following the end of a state fiscal year, submit to the department a cost report
21 stating the VA NF's costs for the state fiscal year.

22 (b) The time limit stated in paragraph (a) of this subsection may be extended at the
23 specific request of the facility with the department's concurrence.

1 (2) If the VA NF experienced a new item or expansion representing a departure from
2 current service levels and for which the VA NF requested prior approval by the depart-
3 ment, the VA NF shall submit a supplement to the cost report to the department which:

4 (a) Describes the new item or expansion; and

5 (b) States the rationale for the new item or expansion.

6 (3)(a) Department approval or rejection of a projection or expansion shall be made on
7 a prospective basis in the context that if an expansion and related costs are approved
8 they shall be considered when actually incurred as an allowable cost.

9 (b) Rejection of an item or costs shall represent notice that the costs shall not be
10 considered as part of the cost basis for reimbursement.

11 (c) Unless otherwise specified, approval shall relate to the substance and intent ra-
12 ther than the cost projection.

13 (d) If a request for prior approval of a projection or expansion is made, absence of a
14 response by the department shall not be construed as approval of the item or expan-
15 sion.

16 (4)(a) The department shall perform a desk review of each cost report to determine
17 whether an audit is necessary and, if so, the scope of the audit.

18 (b) If the department determines that an audit is not necessary, the cost report shall
19 be settled without an audit.

20 (c) A desk review or audit shall be used for purposes of verifying cost to be used in
21 setting the prospective rate or for purposes of adjusting prospective rates which have
22 been set based on unaudited data.

23 (d) Audits may be conducted annually or at less frequent intervals.

(5)(a) A VA NF shall maintain and make available any records and data necessary to justify and document:

1. Costs to the VA NF; and
2. Services performed by the VA NF; and

(b) The department shall have unlimited on-site access to all of a VA NF's fiscal and service records for the purpose of:

1. Accounting;
2. Auditing;
3. Medical review;
4. Utilization control; or
5. Program planning.

Section 7. Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual to a VA NF, a VA NF shall conduct a level I PASRR in accordance with 907 KAR 1:755.

(2)(a) The department shall not reimburse a VA NF for a service delivered to an individual if the VA NF did not comply with the requirements of 907 KAR 1:755.

(b) Failure to comply with 907 KAR 1:755 may be grounds for termination of a VA NF's participation in the Medicaid Program.

Section 8. No Duplication of Service. The department shall not reimburse for a service provided by a VA NF to a recipient if the same service is provided at the same time to the recipient by another Medicaid program provider.

Section 9. Records Maintenance, Protection, and Security. (1)(a) A VA NF shall maintain a current health record for each recipient.

1 (b)1. A health record shall document each service provided to the recipient including
2 the date of the service and the signature of the individual who provided the service.

3 2. The individual who provided the service shall date and sign the health record on
4 the date that the individual provided the service.

5 (2)(a) A VA NF shall maintain a health record regarding a recipient for at least five (5)
6 years from the date of the service.

7 (b) If the United States Department of Health and Human Services secretary requires
8 a longer document retention period than the period referenced in paragraph (a) of this
9 section, pursuant to 42 CFR 431.17, the period established by the secretary shall be the
10 required period.

11 (3) A VA NF shall comply with 45 Chapter 164.

12 Section 10. Medicaid Program Participation Compliance. (1) A VA NF shall comply
13 with:

14 (a) 907 KAR 1:671;

15 (b) 907 KAR 1:672; and

16 (c) All applicable state and federal laws.

17 (2)(a) If a VA NF receives any duplicate payment or overpayment from the depart-
18 ment, regardless of reason, the VA NF shall return the payment to the department.

19 (b) Failure to return a payment to the department in accordance with paragraph (a) of
20 of this subsection may be:

21 1. Interpreted to be fraud or abuse; and

22 2. Prosecuted in accordance with applicable federal or state law.

23 Section 11. Third Party Liability. A VA NF shall comply with KRS 205.622.

1 Section 12. Use of Electronic Signatures. (1) The creation, transmission, storage, and
2 other use of electronic signatures and documents shall comply with the requirements
3 established in KRS 369.101 to 369.120.

4 (2) A VA NF that chooses to use electronic signatures shall:

5 (a) Develop and implement a written security policy that shall:

- 6 1. Be adhered to by each of the VA NF's employees, officers, agents, or contractors;
- 7 2. Identify each electronic signature for which an individual has access; and
- 8 3. Ensure that each electronic signature is created, transmitted, and stored in a se-
9 cure fashion;

10 (b) Develop a consent form that shall:

- 11 1. Be completed and executed by each individual using an electronic signature;
- 12 2. Attest to the signature's authenticity; and
- 13 3. Include a statement indicating that the individual has been notified of his responsi-
14 bility in allowing the use of the electronic signature; and

15 (c) Provide the department with:

- 16 1. A copy of the VA NF's electronic signature policy;
- 17 2. The signed consent form; and
- 18 3. The original filed signature immediately upon request.

19 Section 13. Auditing Authority. The department shall have the authority to audit any
20 claim or medical record or documentation associated with any claim or medical record.

21 Section 14. Federal Approval and Federal Financial Participation. The department's
22 reimbursement and coverage of services pursuant to this administrative regulation shall
23 be contingent upon:

- 1 (1) Receipt of federal financial participation for the reimbursement and coverage; and
- 2 (2) Centers for Medicare and Medicaid Services' approval for the reimbursement and
- 3 coverage.

4 Section 15. Drug Reimbursement. Drugs to a recipient in a VA NF shall:

- 5 (1) Be reimbursed via the department's outpatient pharmacy program in accordance
- 6 with 907 KAR 1:018;
- 7 (2) Not be included in VA NF Medicaid allowable costs; and
- 8 (3) Not be reimbursed pursuant to this administrative regulation.

9 Section 16. Appeal Rights. A participating VA NF may appeal a department decision

10 as to the application of this administrative regulation as it impacts the VA NF's reim-

11 bursement in accordance with 907 KAR 1:671.

907 KAR 18:005

REVIEWED:

Date

Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

907 KAR 18:005

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on May 21, 2014 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing May 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until June 2, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 18:005
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact: Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding Veterans Affairs nursing facility services.
 - (b) The necessity of this administrative regulation: The administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding Veterans Affairs nursing facility services.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding Veterans Affairs nursing facility services.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding Veterans Affairs nursing facility services.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
 - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
 - (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Veterans Affairs nursing facilities will be affected by the amendment. Currently, there are three (3) such facilities operating in Kentucky – the Eastern Kentucky Veterans Center in Hazard, KY; the Thomson-Hood Veterans Center in Wilmore, KY; and the Western Kentucky Veterans Center in Hanson, KY. A fourth is scheduled to open in the Autumn of 2015 in Radcliff, KY.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the

change, if it is an amendment, including:

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Any Veterans Affairs nursing facility which wishes to be reimbursed by the Kentucky Medicaid program must enroll with the Medicaid program by completing a provider agreement application and performing the actions required in the agreement. To be reimbursed for services VA nursing facilities will have to submit a cost report (documenting the facility's cost) to the department annually.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment; however, a facility will experience administrative cost related to staff time involved in completing Medicaid program provider agreement.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Veterans Affairs nursing facilities will be benefit by being reimbursed for services provided to Medicaid recipients and on a cost basis.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: The Kentucky Office of Veterans Affairs (KOVA) will provide the state matching funds necessary to procure federal Medicaid funds; thus, the Department for Medicaid Services (DMS) will experience no cost to implement this administrative regulation. DMS projects annual expenditures in aggregate for the three (3) existing Veterans Affairs nursing facilities in Kentucky to be approximately \$20.04 million (\$6.01 million state funds/\$14.03 million federal funds.)
 - (b) On a continuing basis: The response in (a) above also applies here.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not applied as the provisions and requirements apply equally to all Veterans Affairs nursing facilities .

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 18:005

Agency Contact: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)(A), 42 U.S.C. 1396a(a)(13)(A), and 42 C.F.R. 447.204.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S. C. 1396a(a)(30)(A) requires a state's Medicaid program to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

42 U.S.C. 1396a(a)(13)(A) requires "a public process for determination of rates of payment" for nursing facility services and services for intermediate care facilities for individuals with an intellectual disability.

42 C.F.R. 447.204 requires Medicaid programs' reimbursement to be "sufficient to enlist enough providers so that services under the plan are available to beneficiaries at least to the extent that those services are available to the general population."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 18:005

Agency Contact Person: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services and the Kentucky Department of Veterans Affairs will be affected by this administrative regulation.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation and 42 C.F.R. 447.204 authorize the action taken by this administrative regulation.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenues that the Veterans Affairs nursing facilities in Kentucky will receive as a result of this administrative regulation is indeterminable due to the associated variables. A given facility's reimbursement will be based on their Medicaid allowable costs and that won't be accurately known until a facility experiences a full year of costs. Costs will depend on utilization including the number of Medicaid recipients receiving services during the state fiscal year from the given facility. Another variable is how soon a given facility enrolls in the Medicaid program.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The response in (a) above also applies here.
 - (c) How much will it cost to administer this program for the first year? The Kentucky Office of Veterans Affairs (KOVA) will provide the state matching funds necessary to procure federal Medicaid funds; thus, the Department for Medicaid Services (DMS) will experience no cost to implement this administrative regulation. DMS projects annual expenditures in aggregate for the three (3) existing Veterans Affairs nursing facilities in Kentucky to be approximately \$20.04 million (\$6.01 million state funds/\$14.03 million federal funds.)
 - (d) How much will it cost to administer this program for subsequent years? The response to question (c) above also applies here.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: